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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,369	06/26/2003	Shinsuke Miyazaki	2018-738	2820
23117	7590	02/25/2005		
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			EXAMINER CASTRO, ARNOLD	
			ART UNIT 3747	PAPER NUMBER

DATE MAILED: 02/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/606,369

Applicant(s)

MIYAZAKI ET AL.

Examiner

Arnold Castro

Art Unit

3747

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/26/03, 05/06/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Priority***

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

2. The information disclosure statement (IDS) submitted on June 26, 2003 and May 6, 2004 are in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statements.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3-7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 3 recites the limitation ", and the shielding means has a first shielding portion for shielding the slidable contact portion at the outside of the motor". It is unclear if applicant is claiming the slidable contact portion has moved to the outside of the motor or that the shielding means is at the outside of the motor which contradict claims 1 and 2 respectively. Is it possible that a second slidable contact portion is being claimed such as the gear contact area?

6. Claim 4 recites the limitation "second shielding portion" in line 3 of claim. There is insufficient antecedent basis for this limitation in the claim, as a first shielding portion

Art Unit: 3747

has not been claimed. Is applicant implying a first shielding portion exist that is a limitation to claim? Is claim 4 meant to depend from claim 3?

7. Claim 5 claims shielding means has a tape member stuck **on** the motor. However claim one states the shielding means is **in** the motor. A dependent claim must have all limitations of independent claims. Claim 5 contradicts claim 1 and therefore it is indefinite as to what is being claimed.

8. Claims 6 claims shielding means is provided in a transmission means housing chamber. However claim one states the shielding means is **in the motor**. A dependent claim must have all limitations of independent claims. Claim 6 contradicts claim 1 and therefore it is indefinite as to what is being claimed.

9. Claim 7 recites the limitation "third shielding portion" in line 2 of claim. There is insufficient antecedent basis for this limitation in the claim as a first nor second shielding portion has not been claimed. Is applicant implying a first and second shielding portion exist that is a limitation to claim? Is claim 7 meant to depend from claim 4?

### ***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. As best understood, Claims 1-4, and 6-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Hickmann et al. (US/5,141,070).

Art Unit: 3747

12. Hickmann et al discloses a throttle device comprising: a throttle body defining an intake air path; a valve member being rotatable for adjusting an amount of intake airflow flowing in the intake air path; a motor, the motor a brush; and a commutator, comprising: wherein the commutator is in slidable motor generates torque to contact with the brush, wherein the drive the valve member; driving force transmission means having a gears, the driving force transmission plurality of means transmitting the torque generated in the motor to the valve member; and shielding means (brush holder shown screwed into housing in figure 2) provided on a driving force transmission means side of a slidable contact portion, in which the brush and the commutator are in slidable contact with each other, for shielding the slidable contact portion.

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Hickmann et al. (US/5,141,070).

15. Hickmann et al. applies as in claim 2 above but does not show tape been used as shielding. It is well known to cover openings with tape to prevent debris from falling in an opening.

At the time of the invention it would have been obvious to tape the interface between the housing and motor to prevent dust from entering the throttle valve.


Art Unit: 3747

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arnold Castro whose telephone number is (571) 272-4839. The examiner can normally be reached on Mon, Tues, Wed, Thurs 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yuen Henry can be reached on (571)-272-4856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Arnold Castro  
Examiner  
Art Unit 3747

AC

  
Henry C. Yuen  
Supervisory Patent Examiner  
Group 3700